

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4133 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

MOHAMMEDSHARIF YAKUBJI

JAWRAWALA

Versus

STATE OF GUJARAT

Appearance:

MR GR SHAIKH for Petitioners

MR. S.P. DAVE, LD.GOV'T. PLEADER for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 21/01/97

ORAL JUDGEMENT

The present Petition bringing certain questions under the Urban Land (Ceiling & Regulation) Act, 1976 before me requires a partial recognition. The petitioners No. 1 & 2 happens to be the holders of the land, while the petitioner no.3 a partnership business

happens to be the lessee qua the lands under consideration. The Competent Authority who was firstly seized with the matter has passed necessary orders on September 17, 1987. According to the Competent Authority, petitioner no.1 Mohammed Sharif had the holdings at Behrampur and Jamalpur. The petitioner no.2 Mohammed Husein had also the holdings at the very same places, at Behrampur and Jamalpur. After hearing the parties and upon the verification of the record, the Competent Authority under the above said orders had come to the conclusion that, the excess vacant land held by Mohammed Husein would be 3909 sq. meters, while the excess land held by Mohmeed Sherif would be 3903 sq.meters. This orders dated June 30, 1987, were taken before the Urban Lands Tribunal by filing three appeals, which came to be decided and disposed of under the orders dated December 30, 1989. The Tribunal had recognised the case accepted by the Competent Authority that the petitioners would be entitled to two units. But it appears that, a further contention was raised before the Tribunal, saying that, the proceedings under Section 20 of the ULC Act, 1976, which were previously pending, now have been decided and that, therefore, the matter requires a remand to the Competent Authority with a view to examine the case of the petitioners falling under Section 20 of the ULC Act, 1976. This orders dated December 30, 1989 therefore would go to show that, the matter came to be remanded only for the purpose of examining the question relating to the provisions contained under Section 20 of the Act of 1976. Putting the very same matter in other words, it could be said that the finding of the Competent Authority regarding two units had become final and conclusive and that, the limited scope of the remand would not take that question under its sweep.

Before the Competent Authority, in the remanded proceedings, the orders pronounced by the Industries Commissioner passed somewhere in the month of October 1993, were pressed in service. The Competent Authority to whom the matter was remanded was required to consider the question regarding the entitlement of the benefit of the petitioners under Section 20 of the Act of 1976. But it appears that, under the orders in the remanded proceedings, the Competent Authority has proceeded further and has come to the conclusion that, both the petitioners would be entitled to only one unit. Of course the land being utilised for the industrial purpose has been excluded from the zone of consideration. But when only one unit came to be recognised, it was the opinion expressed by the Competent Authority that an area

of 1466 sq. meters could be said to be the excess vacant land. This orders of the Competent Authority were once again taken before the Tribunal. The Appeal came to be dismissed by the Tribunal under the orders dated April 25, 1996. What all was said by the Competent Authority came to be upheld and confirmed by the brief orders pronounced by the Tribunal. These orders are in challenge before me in the present petition.

Firstly, it shall have to be appreciated that, when for the first time the matter came to be remanded under the orders dated December 30, 1989, it was remanded with a limited scope, because the Competent Authority was required to examine the case of the petitioners in light of the provisions contained under Section 20 of the ULC Act, 1976. But during the remanded proceedings the Competent Authority has recognised only one unit. In other words the authority who has decided the remanded proceedings has exceeded the scope of the inquiry which was ordered or directed to be made by the Tribunal. This could not have been done and that, ultimately the Tribunal in the orders dated April 25, 1996 was not justified in upholding these orders.

Therefore it is clear that the petitioners would be entitled to the benefit qua the industrial land under Section 28 of the ULC Act, 1976. The petitioners shall be entitled to two units. If the view is taken in the above said manner, it is clear that an area of 466 sq. meters alone appear to be the excess vacant land. But for this also there are two contentions coming from learned counsel Mr. Shaikh. According to learned counsel, there are certain constructions on the lands and that the said area should be excluded. It appears that, the Tribunal has taken the view that there was not enough material which could be considered and upon the basis of which a finding can be rendered. The petitioners shall have to show the exact area under consideration along with a further fact regarding its authoritative construction. The second contention coming from learned counsel Mr. Shaikh is that, the area equivalent to 10% of each of the two holdings also shall have to be deducted because that area cannot be said to be the excess vacant land. The matter therefore requires to be remanded to the Competent Authority only with a view to examine the above said two contentions being raised by learned counsel Mr. Shaikh. In other words, while allowing the present petition, I have reached the conclusion that the industrial land requires to be deducted, and in the same way the petitioners would be entitled to two separate units. Therefore the scope of

the inquiry by the Competent Authority shall be limited to the examination of above said two contentions being raised by learned counsel Mr. Shaikh before me. The present petition therefore requires a partial recognition. The matter is remanded for the above said limited purpose. The Competent Authority is required to perform this exercise within a period of three months from the date of the receipt of the writ of the present orders. Rule is made absolute to the above said extent.
